United Nations CAT/C/THA/QPR/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the second periodic report of Thailand*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In its previous concluding observations (see CAT/C/THA/CO/1, para. 31),[1] the Committee requested the State party to provide further information regarding areas of particular concern identified by the Committee, namely special laws, fundamental legal safeguards, impunity and human rights defenders (paras. 12, 13, 15 and 18). Noting that a reply concerning the information sought by the Committee was provided on 29 May 2015 (CAT/C/THA/CO/1/Add.1), and with reference to the letter dated 29 August 2016 from the Committee's Rapporteur for follow-up to concluding observations,[2] the Committee considers that the recommendations included in paragraphs 12, 15 and 18 have not yet been implemented (see paragraphs 3, 4, and 28, respectively, of the present document). The recommendations included in paragraph 13 of the previous concluding observations are considered to have been only partially implemented (see paragraph 5 of the present document).

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (para. 9), please provide updated information on the measures taken to make torture a separate and specific crime in national legislation, with a definition of torture that is consistent with article 1 of the Convention, includes appropriate penalties and is not subject to any statute of limitations.[3] In this regard, please indicate the status of the draft Prevention and Suppression of Torture and Enforced Disappearance Act and whether it has been further amended since its submission to the National Legislative Assembly in December 2016. Please also comment on reports according to which the latest version of this bill removes provisions regarding the absolute and non-derogable nature of the prohibition of torture and the principle of non-refoulement and limits the scope of the principle of command or superior responsibility for acts of torture committed by subordinates.

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] Available from http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en.

[3] See CAT/C/THA/CO/1/Add.1, paras. 37–41; CCPR/C/THA/CO/2, paras. 19–20; and A/HRC/33/16, paras. 64, 158.12, 158.30 and 158.32–33.

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Article 2[4]

3. Please provide clarification regarding any efforts under way to repeal domestic legislation that could result in immunity for acts of torture or ill-treatment. In particular, and with reference to the Committee's previous concluding observations (paras. 11–12) and the State party's follow-up replies,[5] please provide information concerning measures the State party has taken or is taking to review the following:

(a) Provisions of its 2017 Constitution (sects. 265 and 279) that incorporate provisions of the 2014 interim Constitution granting the National Council for Peace and Order immunity from judicial review;[6]

(b) Orders Nos. 3/2558 (2015) and 13/2559 (2016) of the National Council for Peace and Order, which reportedly provide members of the Thai military and paramilitary forces who have been designated "Peace and Order Maintenance Officers" or "Prevention and Suppression Officers" with immunity from judicial review or criminal, civil and administrative liability, including for acts amounting to torture;

(c) The 1914 Martial Law Act, the 2005 Emergency Decree and the 2008 Internal Security Act, which in the Committee's view reinforced a climate of impunity for serious human rights violations (para. 12). Please particularly indicate whether the State party has undertaken a review of the Martial Law Act and section 17 of the Emergency Decree, which grant immunity from prosecution to officials enforcing a state of emergency;

(d) Article 30 of the amended Penitentiary Act, which reportedly exempts prison and other officials from civil and criminal liability for ill-treatment in cases where they are deemed to have been acting in "good faith".

4. Further to the Committee's previous concluding observations (para. 15), and noting the State party's follow-up replies,[7] please provide information on any progress made in addressing the Committee's concern about the existence of de facto impunity for acts of torture. In particular, please provide information concerning any cases in which a public official in the State party has been criminally prosecuted for acts amounting to torture or ill-treatment during the reporting period.

5. Bearing in mind the Committee's previous concluding observations (para. 13) and the State party's follow-up replies,[8] please provide information on any new measures taken by the State party during the reporting period to ensure that all detainees enjoy, in law and in practice, all legal safeguards from the outset of their deprivation of liberty. In particular, please provide information on new measures: (a) to ensure the right of detainees to request and receive an examination by an independent physician of their choice and to notify a relative or any other person of their choice of their arrest;[9] (b) to keep detention registers up to date; and (c) to ensure the availability of legal aid.

6. Please provide data on the prevalence of the practice, authorized under orders Nos. 3/2558 (2015) and 13/2559 (2016) of the National Council for Peace and Order, by which military officers are permitted to detain civilians incommunicado and without charge for up to seven days in unofficial places of detention and other locations, including military

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[4] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[5] See CAT/C/THA/CO/1/Add.1, paras. 50–67; and letter dated 29 August 2016 from the Committee's Rapporteur for follow-up.

[6] See CEDAW/C/THA/CO/6-7, paras. 22–23; CCPR/C/THA/CO/2, paras. 7–8 and 19–22; CRC/C/THA/CO/3-4, paras. 84–85; and CERD/C/THA/CO/1-3, paras. 21–22.

[7] See CAT/C/THA/CO/1/Add.1, paras. 22–33.

[8] Ibid., paras. 4–21.

[9] See letter dated 29 August 2016 from the Committee's Rapporteur for follow-up.

facilities, on suspicion of having committed a wide range of offences. Please provide data on the number of civilians detained in the Nakhon Chaisri temporary remand facility within the 11th Army Circle base since its establishment in 2015 and indicate whether civilians have been detained at other military bases or unofficial places of detention during the reporting period. Please indicate whether the State party has taken measures to ensure that civilians are only detained at official places of detention and detail any measures adopted to provide fundamental legal safeguards against torture, from the outset of their deprivation of liberty, to persons detained pursuant to orders Nos. 3/2558 (2015) and 13/2559 (2016) of the National Council for Peace and Order.[10]

7. In the light of the Committee's previous concluding observations (para. 14), please clarify whether enforced disappearance has been made a specific crime in the State party's domestic law.[11] Please indicate any progress in the investigation of allegations raised by the Committee during the previous review, including the cases of Pholachi ("Billy") Rakcharoen and Somchai Neelaphaijit, and the investigation of allegations of enforced disappearance that have arisen during the reporting period, such as the case of land rights activist Den Khamlae. Please provide data on any case in which individuals have been prosecuted for acts amounting to enforced disappearance during the reporting period. Please also indicate the State party's anticipated time frame for ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.[12]

8. Please provide information on the results of recent measures taken to ensure that the National Human Rights Commission of Thailand operates in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including measures taken to ensure that the Commission has operational independence, that it is empowered to access all places of detention, that it receives adequate resources[13] and that its members are selected through a transparent process.

9. Further to the Committee's previous concluding observations (para. 16), please provide information on measures taken to combat all forms of violence against women, particularly with regard to cases that involve the actions and omissions of State authorities and others that engage the State party's international responsibility in accordance with the Convention.[14] Please include statistical data on the number of complaints of gender-based violence and the investigations, prosecutions, convictions and punishments resulting from those complaints since the consideration of the initial report of Thailand.[15] Please also provide information on the impact of the implementation of the 2007 Domestic Violence Victim Protection Act and provide information on the number of protection orders granted and the number of victims of gender-based violence who have benefited during the reporting period from support services established for this purpose in the State party.[16]

10. With regard to the Committee's previous concluding observations (para. 17), please provide the number of complaints, investigations, prosecutions and convictions and the sentences imposed in cases of human trafficking during the reporting period. Please also provide information on the provision of redress to victims of trafficking during the reporting period, including data on the number of persons who benefited from protection and support measures for victims.[17]

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[10] See CCPR/C/THA/CO/2, para. 25–26; and Office of the United Nations High Commissioner for Human Rights, "Press briefing notes on Ethiopia and Thailand", 19 August 2016, and "UN Human Rights Chief deeply concerned at growing military role in Thai Government", 22 April 2016.

[11] See A/HRC/33/16, paras. 158.77–78; and CCPR/C/THA/CO/2, paras. 19–20.

[12] See CAT/C/THA/CO/1/Add.1, para. 42; and A/HRC/33/16, paras. 158.16–20.

[13] See A/HRC/33/16, paras. 158.39–48.

[14] See A/HRC/33/16, paras. 21, 24, 158.81–84, 158.92 and 159.35; and CEDAW/C/THA/CO/6-7, paras. 18–22.

[15] See CCPR/C/THA/CO/2, paras. 13–14.

[16] See CEDAW/C/THA/CO/6-7, paras. 20–21.

[17] See A/HRC/33/16, paras. 78 and 158.108.

Article 3

11. With reference to the previous concluding observations (para. 20), please describe the measures taken during the period under review to ensure that no person was returned to a country where he or she was at risk of being tortured.[18] Please indicate whether individuals facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision, and whether such an appeal has suspensive effect. Please provide an update on appeals that have been made and the outcome of those appeals. Please also provide detailed information on the measures adopted to identify vulnerable persons seeking asylum in Thailand, including victims of torture or trauma, and to ensure that their specific needs are taken into consideration and addressed in a timely manner.

12. Please provide the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by country of origin, on the number of persons who have been returned, extradited or expelled since the Committee considered the State party's previous report, including the list of countries to which individuals were returned.[19]

13. Please indicate the number of returns, extraditions and expulsions carried out by the State party during the reporting period on the basis of diplomatic assurances or the equivalent thereof. What is the minimum content of any such assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring? Please provide specific information about whether diplomatic assurances were sought and obtained by the Thai authorities in the May 2017 extradition of Turkish national Muhammet Furkan Sökmen from Myanmar to Turkey via Bangkok and, if so, their specific contents.

Article 10

14. Bearing in mind the Committee's previous concluding observations (para. 26), please provide up-to-date information on educational programmes developed by the State party to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing the number of cases of torture and ill-treatment and, if so, please provide information on that methodology.

15. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture, including whether they contain specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Article 11

16. With regard to the Committee's previous concluding observations (para. 23), please provide information on the State party's practices relating to issues addressed in the amended Penitentiary Act, specifically: the use of instruments of restraint; the practice of solitary confinement, which is permitted in excess of 15 consecutive days; and the discretion given to the Corrections Department to designate places other than prisons for the purpose of holding persons in custody. Please also provide information about the

[18] See CCPR/C/THA/CO/2, paras. 27–28; CRC/C/THA/CO/3-4, paras. 70–71; and CERD/C/THA/CO/1-3, para. 25.

[19] Office of the United Nations High Commissioner for Human Rights, "Press briefing note on Burundi, Thailand, Guinea and Ethiopia", 10 July 2015, and "High Commissioner Zeid: Pushbacks endanger thousands in Bay of Bengal", 15 May 2015.

operation of the corresponding provisions of the Penitentiary Act in practice and whether the State party has reviewed their compatibility with its obligations under the Convention.

17. With regard to the Committee's previous concluding observations (para. 22), please provide statistical data, disaggregated by gender, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention. Please describe measures taken to reduce prison overcrowding[20] during the period under review, including any measures to increase the use of alternatives to imprisonment, both before and after trial. Please inform the Committee of the measures taken to address concerns about insufficient food and potable water, poor sanitation and deficiencies in access to appropriate health care in places of detention.

18. Please provide information on efforts by the State party to meet the special needs of women in detention, especially pregnant women and women with children, including whether measures have been taken to address concerns regarding invasive body searches performed on women in prison.[21]

19. Please provide information on whether the authorities monitor inter-prisoner violence, the number of complaints that have been made or registered, whether investigations are conducted and their outcomes. Please describe any preventive measures that have been taken in this regard.

20. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention. Please provide information on the manner in which these deaths were investigated, the results of the investigations and the measures taken to prevent similar cases from occurring in the future. In particular, please provide information on the outcome of the investigations concerning the deaths of Police Major Prakrom Warunprapa and Suriyan Sucharitpolwong at the Nakhon Chaisri temporary remand facility in Bangkok, and whether these resulted in any disciplinary or criminal proceedings. Please indicate any cases during the reporting period in which relatives of people who have died in custody have received compensation.

21. With reference to the previous concluding observations (para. 21), please provide updated data on the number of asylum seekers and migrants in detention in the State party. Please also indicate any measures taken by the State party during the reporting period to ensure that detention of asylum seekers and migrants is only used as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to detention.[22] Please also provide information on any measures taken to improve the conditions of detention in immigration centres during the reporting period.[23]

22. Please provide data on visits to places of detention carried out by the National Human Rights Commission of Thailand and national and international monitoring organizations during the period under review, and indicate whether the Commission and other independent monitors have unhindered access to all places of detention without prior notice. Please describe any measures taken to establish an independent and systematic monitoring system at the national level for all detention facilities.

Articles 12–13

23. In the light of the Committee's previous concluding observations (paras. 10–12, 15 and 28) and the State party's follow-up replies,[24] please provide updated statistical data on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State party's authorities during the reporting period. Please include information on investigations, disciplinary and criminal proceedings and convictions and on the criminal or disciplinary

[20] See A/HRC/33/16, para. 158.80; CCPR/C/THA/CO/2, paras. 33–34; CEDAW/C/THA/CO/6-7, paras. 44–45; and E/C.12/THA/CO/1-2, para. 28.

[21] See CEDAW/C/THA/CO/6-7, paras. 44–45.

[22] See A/HRC/33/16, paras. 159.66–67; and CCPR/C/THA/CO/2, paras. 29–30.

[23] See A/HRC/33/16, para. 158.179.

[24] See CAT/C/THA/CO/1/Add.1, paras. 22–33; and letter dated 29 August 2016 from the Committee's Rapporteur for follow-up.

sanctions applied.[25] In particular, please provide information on the outcome of the investigations and any disciplinary or criminal proceedings concerning the alleged torture or ill-treatment of Kritsuda Khunasen, Sansern Sriounreun and Bilal Mohammad.

24. With regard to the Committee's previous concluding observations (para. 15), please indicate whether the State party plans to set up an independent and impartial body to investigate allegations of acts of torture and ill-treatment by law enforcement personnel. Please also provide information on the current status and functioning of the committee established in May 2017 pursuant to Order No. 131/2560 (2017) of the Office of the Prime Minister for the purpose of investigating allegations of torture and enforced disappearances, the number of cases assigned to this committee, the status of any investigations under way and whether any investigations have resulted in prosecutions or other outcomes.

25. Please describe any efforts by the State party to ensure that witnesses and victims of human rights violations, including torture, and members of their families are effectively protected and assisted.[26] Please provide information on any investigation by the State party into allegations that persons who have publicly made allegations of torture, including Anuphong Phanthachayangkun, have been subjected to retaliation, including prosecution by the authorities.

Article 14

26. With reference to the Committee's previous concluding observations (para. 27), please provide information on redress and compensation measures, including means of rehabilitation ordered by the courts and provided to the victims of torture or their families during the period under review. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation, provided to victims of torture and ill-treatment, and the material, human and budgetary resources allocated for their effective functioning.

Article 15

27. Please provide information on any measures taken during the period under review to amend article 226 (1) of the Criminal Procedure Code, which is inconsistent with the principle of the inadmissibility of evidence obtained through torture. Please also indicate whether judges have refused to admit evidence in any cases during the reporting period on the grounds that it was obtained through torture or ill-treatment.

Article 16

28. With reference to the Committee's previous concluding observations (para. 18), the communication to the State party transmitted by the Committee's Rapporteur on reprisals on 15 July 2014[27] and the State party's follow-up replies,[28] please comment on reports of threats and reprisals against persons working to bring to light cases of alleged torture or ill-treatment and enforced disappearances. Please provide information on the steps taken to discipline or criminally prosecute the perpetrators of such acts during the period under review. Please also provide information on any measures taken by the State party to facilitate the work of persons seeking to bring to light cases of alleged violations of the Convention.

29. With reference to the previous concluding observations (para. 19 (e)), please comment on reports that on 9 February 2018 the military filed a complaint with the police against the editor of the "Manager Online" website for defamation in relation to a story

[25] See A/HRC/33/16, paras. 158.76 and 159.17; and CCPR/C/THA/CO/2, paras. 21–22.

[26] See CAT/C/THA/CO/1, para. 19; and CRC/C/THA/CO/3-4, para. 81.

[27] Available from http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=130.

[28] See CAT/C/THA/CO/1/Add.1, 43–45; and letter dated 29 August 2016 from the Committee's rapporteur for follow-up.

published by that news outlet regarding the alleged torture or ill-treatment of a suspect at two military camps. Please also comment on reports indicating that on 14 February 2018 the Director of the Internal Security Operations Command Region 4, Lieutenant Geneneral Piyawat Nakwanich, authorized Lieutenant Colonel Seathtasit Kaewkumuang to lodge a defamation complaint against Isma-ae Tae, the founder of the Patani Human Rights Organization. According to the information before the Committee, the complaint related to a television programme entitled "Policy by People" that aired on the Public Broadcasting Station channel on 5 February 2018, and in which Isma-ae Tae described how he had been tortured and ill-treated by Thai soldiers when he was a student in Yala Province.

Other issues

30. In the light of the Committee's previous concluding observations (para. 8), please provide updated information on any changes in the State party's position on withdrawing its interpretative declaration and reservation made at the time of its accession to the Convention.

31. Please indicate whether the State party envisages ratifying the Optional Protocol to the Convention[29] and, with regard to the Committee's previous concluding observations (para. 29), please indicate whether the State party is considering making the declaration provided for under articles 21 and 22 of the Convention.

General information on other measures and developments relating to the implementation of the Convention in the State party

32. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

[29] See CAT/C/THA/CO/1, para. 24; CAT/C/THA/CO/1/Add.1, paras. 34–36; and A/HRC/33/16, paras. 158.7–10 and 158.13.